sional districts is destructive of a republican form of government. U. S. CONST., Art. 4, § 4. This is a political question not for judicial determination. *Pacific States Tel. & Tel. Co.* v. *Oregon*, 223 U. S. 118. See 24 HARV. L. REV. 141. *Cf. Kiernan* v. *City of Portland*, 57 Ore. 454, 112 Pac. 402; *State* v. *Board of Commissioners*, 93 Kan. 405, 144 Pac. 241. But the question whether the word "legislature" in Art. 1, § 4, of the Constitution means the periodical representative assembly of the state, or the whole constitutional law-making machinery, including, as in this case, the people acting by initiative or referendum, was not discussed. The latter construction has been approved by a decision of the Supreme Court of South Dakota. *State ex rel. Schrader* v. *Polley*, 26 S. Dak. 5, 127 N. W. 848. See 24 HARV. L. REV. 220. In 1911 Congress impliedly recognized the more inclusive definition by providing that states might redistrict themselves "in the manner provided by the laws thereof." 37 STAT. AT LARGE, 13, ch. 5, COMP. STAT. 1913, § 15. The decision in the principal case assures the constitutionality of this act, and, although it does not in terms discuss the point, necessarily sanctions the definition of the South Dakota case.

CONTRACTS — DEFENSES: IMPOSSIBILITY — FAILURE OF CONSIDERATION — DIMINUTION OF PRICE. — In 1911 a gas company entered into a contract with an urban council whereby the gas company was to install a gas plant, furnish street lamps, and maintain them for five years. The council agreed to pay therefor a fixed annual sum per lamp, payment to be made in four equal quarterly installments. On January 1, 1915, the Defence of the Realm Act prohibited lighting street lamps "until further order." Consequently no gas was consumed between January 1, 1915, and November 1, 1915, when the gas company sued for the first three quarterly installments of 1915. *Held*, the gas company can recover. *Leiston Gas Co.* v. *Leiston-cum-Sizewell Urban District Council*, [1916] 2 K. B. 428.

Where performance is rendered impossible by domestic law, the promisor is not liable. *Bailey* v. *De Crespigny*, L. R. 4 Q. B. 180; *Horlock* v. *Beal*, [1916] 1 A. C. 486; *Cordes* v. *Miller*, 39 Mich. 581. This defense rests upon the policy of the law in refusing to force a party to do that which it has expressly forbidden. See 18 HARV. L. REV. 384. The principal case goes further, in that it allows the defaulting party to profit by his non-performance. The court, considering the erection of the plant and lighting system, the full performance for a long period, and the indefinite duration of the order, decided that there had not been a substantial failure of consideration. Thus the plaintiff's breach neither created liability, nor did it furnish a defense for defendant's refusal to perform. It would seem equitable in such a case to diminish the contract price, to which the plaintiff is thus entitled, to the extent that he has profited by his non-performance. In the principal case, under this rule, the plaintiff would recover the installments reduced by the expenses which he has saved by his non-performance. He would then recover fully for the services performed and his profit for the whole. This remedy in the nature of a recoupment for unearned enrichment is recognized in France, Germany, and other jurisdictions following the civil law. See WILLISTON, SALES, § 606. Surely the law, having created the loss, should apportion it equitably.

CORPORATIONS — CAPITAL, STOCK, AND DIVIDENDS — NATURE OF OVER-ISSUED STOCK. — The defendant corporation issued stock certificates in excess of its charter limit to a purchaser for value without notice. The purchaser assigned to a third person for value "all claims and demands of every description and kind" against the defendant. Later he assigned the certificates without consideration to the plaintiff. The defendant refused to issue new certificates to the plaintiff. The plaintiff sues. *Held*, that he may not recover. *Smith* v. *Worcester, etc. Ry. Co.*, 113 N. E. 462 (Mass.).

An issue of stock in excess of the charter limit is void. *New York, etc. R. Co.*

v. *Schuyler*, 34 N. Y. 30; *Scovill* v. *Thayer*, 105 U. S. 143. An illustration of this is the fact that equity will not compel the corporation to recognize as a shareholder a person acquiring certificates of such stock. 1 COOK, CORPORATIONS, 6 ed., § 284. But the *bonâ fide* purchaser of such certificates may recover damages at law. A stock certificate is a representation by the corporation that the person to whom it is issued is the owner of shares. *In re Bahia, etc. R. Co.*, 3 Q. B. 584. If knowledge of the falsity of the misrepresentation can be brought home to the corporation, all the requisites of an action of deceit are present. See *First Avenue Land Co.* v. *Parker*, 111 Wis. 1, 9, 86 N. W. 604, 607. Recovery may also be based on estoppel. For a corporation wrongfully refusing to recognize as owner the transferee of a valid certificate may be held liable in an action on the case. See *Protection Life Ins. Co.* v. *Osgood*, 93 Ill. 69. Some courts also permit the transferee to recover in assumpsit. *Hill* v. *Pine River Bank*, 45 N. H. 300. A recovery in trover has also been allowed. *Ralston* v. *Bank of California*, 112 Cal. 208, 44 Pac. 476. A purchaser for value of a void certificate, in an action for refusal to issue a new certificate, should have the same three remedies. For against a *bonâ fide* purchaser of a certificate of void stock the corporation is estopped to set up invalidity. *In re Bahia, etc. R. Co., supra.* See *Allen* v. *South Boston R. Co.*, 150 Mass. 200, 204, 22 N. E. 917, 918. But the plaintiff in the principal case was not a purchaser for value. He therefore acquired only the rights of his assignor. As under any of the theories of recovery set forth the *bonâ fide* purchaser of overissued stock holds only a "claim or demand," the assignor had already assigned his rights and had nothing to give to the plaintiff.

DANGEROUS PREMISES — LIABILITY OF CONTRACTOR IN POSSESSION TO EMPLOYEE OF OWNER. — The defendant, a contractor, was in possession of certain premises while erecting a building for the owner. The contract provided that defendant should afford the use of scaffolding to other tradesmen employed by the owner. The plaintiff, a tradesman, fell on the scaffolding and was injured. *Held*, that the plaintiff is entitled to the rights of an invitee. *Elliott* v. *C. P. Roberts & Co.*, 32 Times L. R. 478.

As a greater duty of care as to the condition of the premises is owed by the landlord to an invitee than to a licensee, the determination of the status of an entrant upon the land becomes a matter of distinct importance. See 28 HARV. L. REV. 329. Now it has been held that the servant of a landowner is merely a licensee in a structure in course of erection on the land by an independent contractor. *Blackstone* v. *Chelmsford Foundry Co.*, 170 Mass. 321, 49 N. E. 635. For according to the general rule, the acquisition of the status of invitee is dependent on the fact that the entry on the land was at the express or implied invitation of the occupier and to his business interest. See *Indemaur* v. *Dames*, L. R. 1 C. P. 274, 288. In the principal case, however, the use of the premises by the servants of the landlord was one of the considerations of the contract. Now it is true that the plaintiff can have no direct right under a contract to which he is not a party. *Marvin Safe Co.* v. *Ward*, 46 N. J. L. 19; *Roddy* v. *Missouri Pacific R. Co.*, 104 Mo. 234, 15 S. W. 1112. But the contract in establishing the business interest of the contractor in the use of the premises by the plaintiff does determine the plaintiff's status. For such interest need not necessarily be direct. *Watkins* v. *Great Western Ry. Co.*, 46 L. J. C. P. 817. *Low* v. *Grand Trunk Ry. Co.*, 72 Me. 313. The same result has been reached where the premises were jointly occupied by a contractor and the plaintiff's employer. *Gile* v. *Bishop Co.*, 184 Mass. 413, 68 N. E. 837. Instead of basing the right of recovery on these technical relationships, it might have been better to adopt a single broad rule of reasonable care, such as that once stated in a well-known English opinion. See *Heaven* v. *Pender*, 11 Q. B. D. 503, 509. But the courts have not followed this suggestion. There is a